DAVID E. R. WOOLLEY, State Bar No. 58686
WILLIAMS WOOLLEY
COGSWELL NAKAZAWA & RUSSELL
200 Oceangate, Suite 700
Long Beach, California 90802
Telephone: (310) 495-6000

Attorneys for Involuntary Third-Party Claimant
CHAR YIGH MARINE (PANAMA) S.A.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INTERPOOL, LIMITED,
Plaintiff,
vs.
CHAR YIGH MARINE (PANAMA) S.A
Involuntary Third-Party
Claimant,
and
E. C. YANG, an individual, in default; and CHAR CHING MARINE (H.K.) CO., LTD.; CHAR HSING MARINE CO., LTD.; CHAR AN MARINE (PANAMA) S.A.; CHAR CHE MARINE (PANAMA) S.A.; CHAR CHERNG MARINE (PANAMA) S.A.; CHAR CHUN MARINE (PANAMA) S.A.; CHAR NING MARINE (PANAMA) S.A.; CHAR FUH MARINE (PANAMA) S.A.; CHAR HANG MARINE (PANAMA) S.A.; CHAR HO HANG MARINE (PANAMA) S.A.; CHAR HOONG MARINE (PANAMA) S.A.; CHAR HUI MARINE (PANAMA) S.A.; CHAR JIN MARINE (PANAMA) S.A.; CHAR LIAN MARINE (PANAMA) S.A.;

CHAR LO MARINE (PANAMA) S.A.; CHAR LY MARINE; CHAR SUO MARINE (PANAMA) CHAR TAI MARINE (PANAMA) S.A.; CHAR YEUNG MARINE (PANAMA) S.A.; MULTI CARRIER (PANAMA) S.A.; YUAN-LIAN CHANG MARINE (PANAMA) S.A.; C.C. LINE HOLDING, LTD., corporations in default;

Defendants.

CASE NO. CV-84-6333 IH

INVOLUNTARY THIRD-PARTY CLAIM OF CHAR YIGH MARINE (PANAMA) S.A. IN THE VESSEL C.C. SAN FRANCISCO, OR MORE PROPERLY, A CLAIM IN INTERVENTION AS OF RIGHT

(C.C.P. §§ 720.110, 720.210(b))

COMES NOW, CHAR YIGH MARINE (PANAMA) S.A. (hereinafter "CHAR YIGH") and involuntarily brings this Third-Party Claim of Ownership pursuant to California Code of Civil Procedure § 720.110 or, alternatively, a Third-Party Claim of Security Interest pursuant to California Code of Civil Procedure § 720.210 in the vessel C.C. SAN FRANCISCO, which plaintiff INTERPOOL has attempted to attach, and alleges:

FIRST CAUSE OF ACTION
(Third-Party Claim - Ownership)

1. Involuntary Third-Party Claimant CHAR YIGH at all relevant times prior to March 30, 1985 was a foreign corporation extant and existing under the laws of the Republic of Panama. CHAR YIGH, having been dissolved under the laws of the Republic of Panama, now acts through trustees with the intent of protecting and preserving the initial corporate assets, and of recovering damages and costs of defense from Interpool. Inasmuch as this proceeding was brought prior to the dissolution of CHAR YIGH and has been contested by CHAR YIGH during and within three years of its dissolution, no prescriptive period applies to the defense of this action, and CHAR YIGH possesses legal capacity to defend and to prosecute its interests. Subject to the affirmative defenses below that no service has been properly made, service by mail of all subsequent pleadings in this action may be made on Williams Woolley Cogswell Nakazawa & Russell, 200 Oceangate, Suite 700, Long Beach, California 90802-4333, attention David E. R. Woolley.

2. CHAR YIGH claims to have possessed a sole and complete ownership interest in the vessel C.C. SAN FRANCISCO at the time of its arrest in August of 1984, and which was a Panamanian flag 25,000 DWT Single Screw Diesel Driven Cargo Ship.

3. At the time of arrest, the estimated market value of CHAR YIGH's ownership interest in the vessel C.C. SAN FRANCISCO was less than the construction price, and was about 2.5 billion yen, as demonstrated by a Japanese judicial sale in December 1984.

4. CHAR YIGH as buyer contracted for the construction and purchase of the vessel C.C. SAN FRANCISCO pursuant to a Contract For Construction And Sale dated November 1, 1982 with Sanoyosu Dockyard Company

Limited, the builder. After payment and delivery of the vessel, pursuant to the terms of the Contract, CHAR YIGH acquired sole legal and beneficial ownership of the vessel on November 8, 1983. Such ownership was evidenced by: (1) the Panamanian Certificate of Ownership issued on January 5, 1984, naming CHAR YIGH as the shipowner; (2) the Permanent Registration of Navigation issued on January 10, 1984, naming CHAR YIGH as owner of the vessel; and (3) Panama Public Deed No. 18270 dated December 9, 1983, which pertained to Property Title as protocolized, and which was duly annotated as to registration. Each of these documents are formal documents registered and issued for public purposes under the laws of the Republic of Panama and are not subject to collateral attack or judicial disregard in this Court. Each of the documents in this claim has previously been produced in this litigation and therefore are not appended hereto, but are available at Claimant's counsel's offices and will be produced upon request.

5. Pursuant to a Bareboat Charter Agreement dated November 4, 1983 (hereinafter "Charter") made between CHAR YIGH (as owner) and Char Jin Marine (PANAMA) S.A. (hereinafter "Char Jin") (as charterer), CHAR YIGH agreed to "let and demise" the vessel for a term of 10 years to Char Jin. Article 23 of the Charter stipulates that the Charter is to be governed by and construed in accordance with the laws of Hong Kong, and under these laws, creates no present ownership interest in Char Jin incompatible with CHAR YIGH's right, title and interest.

6. Prior to the institution of this action, Char Jin failed to pay any installment of principal demise charter party hire so that CHAR YIGH declared Char Jin in default and withdrew the vessel from party hire on August 14, 1984. This withdrawal was effective under

the laws of Hong Kong. After August 14, 1984, therefore, Char Jin and its creditors deprived themselves of all residual or contingent rights whatsoever under the demise charter party in the C.C. SAN FRANCISCO or its proceeds.

7. CHAR YIGH contended at the time of the arrest, has contended throughout the entire period in which INTERPOOL has attempted to attach the C.C. SAN FRANCISCO, and continues to contend, that at no time relevant did Char Jin or any C.C. Line company have any attachable interest in the vessel C.C SAN FRANCISCO.

8. INTERPOOL cannot attach the vessel C.C. SAN FRANCISCO to secure any future judgment against Char Jin or C.C. Line company, as none of these defendants had an attachable interest in the vessel.

9. INTERPOOL cannot attach the vessel C.C. SAN FRANCISCO to secure any future judgment against Char Jin or any C.C. Line company, as CHAR YIGH, and not these defendants, has an ownership interest in the C.C. SAN FRANCISCO.

SECOND CAUSE OF ACTION

(Third-Party Claim - Security Interest)

10. Involuntary Third-Party Claimant CHAR YIGH hereby incorporates paragraphs 1 through 9 of this involuntary third-party claim by reference.

11. The Ninth Circuit has held that the charter between CHAR YIGH and Char Jin was a "security instrument," rather than a true lease. *INTERPOOL Ltd. v. CHAR YIGH Marine (Panama) S.A.*, 890 F.2d 1453, 1460 (9th Cir. 1989). According to the Ninth Circuit, therefore, CHAR YIGH's interest in the C.C. SAN FRANCISCO is a "security interest."

12. CHAR YIGH perfected what the Ninth Circuit has called its "security interest" by taking each of the following actions, independently and in concert:

a. Obtaining the Panamanian Certificate of Ownership the Permanent Registration of Navigation and recording Panama's Public Deed No. 18L70, all no later than January 10, 1984.

b. Revoking the charterparty agreement on August 14, 1984.

c. By taking possession of C.C. SAN FRANCISCO on or about September 7, 1984.

13. INTERPOOL has never obtained a writ of attachment and, consequently, has no present interest in the C.C. SAN FRANCISCO.

14. Even if INTERPOOL should obtain a writ of attachment and, subsequently, obtain a judgment, CHAR YIGH's perfected "security interest" in the C.C. SAN FRANCISCO will still take priority over INTERPOOL's lien.

15. CHAR YIGH's security interest takes priority over any present or future interest that INTERPOOL may obtain against the C.C. SAN FRANCISCO; therefore, INTERPOOL is not entitled to execute against the C.C. SAN FRANCISCO, or the security which stands in lieu of the vessel, until CHAR YIGH's perfected security interest has been satisfied.

16. CHAR YIGH estimates that the total amount due or to accrue under its security interest was 4.1 billion yen.

17. The applicable rate of interest on the amounts due was 4.9% at the relevant times.

FIRST AFFIRMATIVE DEFENSE

18. CHAR YIGH appears involuntarily under this Court's order as a third-party claimant in this proceeding. On November 25, 1991, this Court ruled that no cause of action existed against CHAR YIGH, and ordered its dismissal with prejudice. The Court then instructed CHAR YIGH to accept third-party claimant status so that it may protect its security interest in the C.C. SAN FRANCISCO and its interest in the security bond that it posted for the release of the C.C. SAN FRANCISCO.

19. By appearing involuntarily as a "third-party claimant" in this proceeding, CHAR YIGH does not waive any claims, rights or defenses that it has previously asserted or may assert.

SECOND AFFIRMATIVE DEFENSE

20. It is procedurally premature for CHAR YIGH to appear as a third-party claimant because the prerequisites for its appearance have not been satisfied.

21. California Code of Civil Procedure § 720.120(a) provides:

> Where personal property has been levied upon under a writ of attachment, a writ of execution, a prejudgment or postjudgment writ of possession, or a writ of sale, a third person claiming security interest in or a lien on the personal property may make a third-party claim under this chapter if the security interest or lien is superior to the creditor's lien on the property.

22. No writ of attachment has issued in this proceeding; therefore, CHAR YIGH may not appear as a third-party claimant until this important prerequisite for an appearance has been met.

THIRD AFFIRMATIVE DEFENSE

23. CHAR YIGH makes a limited appearance in this proceeding, just as it had as a defendant earlier in the proceeding, and only for the purpose ordered by the Court, inasmuch as this Court lacks jurisdiction for want of service of summons and complaint on CHAR YIGH as defendant, or summons and complaint and supporting papers on CHAR YIGH as a third-party claimant under California Code of Civil Procedure § 484.040.

FOURTH AFFIRMATIVE DEFENSE

24. INTERPOOL failed at the outset of this proceeding to provide adequate legal notice of this proceeding to CHAR YIGH as is required under California Code of Civil Procedure § 484.040 and so there is a lack of jurisdiction over CHAR YIGH and its bond.

FIFTH AFFIRMATIVE DEFENSE

25. Inasmuch as the issuance of a writ of attachment is a statutory condition precedent to a third-party claim under California Code of Civil Procedure § 720.010, *et seq.*, and this condition precedent has not been satisfied, CHAR YIGH contends it is, and should be treated as a claimant-in-intervention as of right under F.R.Civ.P. Rule 24(a).

SIXTH AFFIRMATIVE DEFENSE

26. The Court lacks jurisdiction in this proceeding because the Court did not have *in rem* jurisdiction over the C.C. SAN FRANCISCO at the time of the *in rem* arrest as required by Federal Rule of Civil Procedure Supplemental Rule C(2); because INTERPOOL failed to serve CHAR YIGH *in personam* as required by California Code of Civil Procedure § 484.040; and because CHAR YIGH has never made a *voluntary* appearance in this proceeding.

SEVENTH AFFIRMATIVE DEFENSE

27. The Court has no constitutional basis for exercising jurisdiction in this proceeding because CHAR YIGH has not received adequate legal notice of this proceeding as is required under California Code of Civil Procedure § 484.040.

EIGHTH AFFIRMATIVE DEFENSE

28. As this proceeding involves a dispute between INTERPOOL, a Bahamian corporation, against C.C. Line, a Taiwanese corporation, Char Jin, a Hong Kong corporation, and CHAR YIGH, a Panamanian corporation concerning Panamanian and Hong Kong law, and as the United States has no interest in the outcome of this dispute, the Court should exercise its "unfettered discretion" in admiralty and must therefore dismiss this proceeding under the doctrine of *forum non conveniens*, to Panama.

NINTH AFFIRMATIVE DEFENSE

29. Under federal maritime choice-of-law rules, the Court may not disregard the federal maritime law of the flag as controlling the issue of ownership in this proceeding and must, therefore, recognize that CHAR YIGH is the owner of the C.C. SAN FRANCISCO.

TENTH AFFIRMATIVE DEFENSE

30. Under Act of State Doctrine as illustrated in *Underhill v. Hernandez*, 168 U.S. 250, 42 L.Ed. 456 (1897) and applied in *Bernstein v. Van Heyghen Freres, S.A.*, 163 F.3d 246 (2d Cir. 1947), the Court may not disregard CHAR YIGH's corporate status to divest it of ownership of its property.

ELEVENTH AFFIRMATIVE DEFENSE

31. The security herein has expired by operation of law.

TWELFTH AFFIRMATIVE DEFENSE

32. Plaintiff's cause of action against the defendants was wholly subsumed by the S.D.N.Y. judgment.

THIRTEENTH AFFIRMATIVE DEFENSE

33. To the extent the burden of proof is placed on third-party claimant, this is an unconstitutional burden.

WHEREFORE, CHAR YIGH demands that its ownership interest or, alternatively, its superior security interest be given priority over any interest, if any, that INTERPOOL may have or acquire in the vessel C.C. SAN FRANCISCO as a consequence of this attachment proceeding.

Dated: January 10, 1992

WILLIAMS WOOLLEY
COGSWELL NAKAZAWA & RUSSELL

By: _____
David E. R. Woolley
Attorneys for Involuntary
Third-Party Claimant
CHAR YIGH MARINE
(PANAMA) S.A.